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From: Adrienne Hollis <adrienne@weact.org>
Sent: Thursday, November 16, 2017 9:57 AM
To: FOIA HQ
Subject: Freedom of Information Request from WE ACT for Environmental Justice
Attachments: Final FOIA Request for Superfund Information.doc

Dear Freedom of Information Officer;

Please find the attached request from WE ACT for Environmental Justice, related to information on Superfund Cleanup costs, dated today November 16, 2017.

Thank you,

Dr. Adrienne L. Hollis, Esq.
Director of Federal Policy
WE ACT for Environmental Justice
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Washington, DC 20001
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November 16, 2017

By e-mail to: hq.foia@epa.gov

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460

Re: Freedom of Information Request

Dear Freedom of Information Officer,

This Freedom of Information Act ("FOIA") request is submitted on behalf of West Harlem Environmental Action, Inc. or WE ACT for Environmental Justice ("WE ACT") to request public disclosure of the status of all Superfund sites for which cleanup costs have been estimated or determined, and where agreement on cleanup costs have (or have not) been reached or are in negotiation, with potentially responsible parties, from January 1, 2014 to the present.

WE ACT is a non-profit community-based environmental justice organization based in Harlem, NY. WE ACT started in 1988 when community leaders demanded community-driven, political change. Today, the organization has grown to over 16 staff members and 2 locations in NYC and Washington, D.C., and is considered an active and respected participant in the national Environmental Justice Movement. WE ACT's mission is to build healthy communities by ensuring that people of color and/or low-income residents participate meaningfully in the creation of sound and fair environmental health and protection policies and practices. WE ACT envisions a community that has informed and engaged residents who participate fully in decision-making on key issues that impact their health and community; a strong and equal environmental protections; and increased environmental health through community-based participatory research and evidence-based campaigns.

WE ACT requests access to all information on Superfund sites with actual or estimated cleanup costs, including the name of the site, date it was added to either the National Priorities List or was designated a Superfund alternative agreement site, the site's location (city and state), as well as the status of the cleanup, including cleanup

costs and whether clean-up has begun or is estimated to begin and the estimated completion date.

This request is directly related to EPA Administer Scott Pruitt's decision in May of this year be more involved in Superfund cleanup decisions, and his intention to formally approve any decision where a site cleanup is expected to cost more than \$50 million.

Pursuant to FOIA, 5 U.S.C. § 552, we respectfully request the following:

1. Any and all lists and/or spreadsheets containing information on Superfund sites and estimated or real cleanup costs
2. Any and all letters, external communications, MOUs, Record of Decisions, Administrative Orders on Consent, Administrative Agreements, Judicial Consent Decrees, Agreement for "Work", Cost Recovery Agreements, "Cashout" Agreements, or other public documents acknowledging receipt of cleanup cost estimates (with those estimates) or which are used in the determination of cleanup costs (real or estimate) for Superfund sites, including the site name and location (city and state), and any other site specific identifying information.
3. Any and all letters, external communications, MOUs, Record of Decisions, Administrative Orders on Consent, Administrative Agreements, Judicial Consent Decrees, Agreement for "Work", Cost Recovery Agreements, "Cashout" Agreements or other public documents communicating the status of cleanup of Superfund sites, from January 1, 2014 to the present, including the site name and location (city and state), potentially responsible party or other party liable for cleanup, as described under §107(a), or where applicable, the amount of money to be spent by EPA from its trust fund on site cleanup activities.
4. Any and all letters, external communications, MOUs, Record of Decisions, Administrative Orders on Consent, Administrative Agreements, Judicial Consent Decrees, Agreement for "Work", Cost Recovery Agreements, "Cashout" Agreements or other public documents containing information on construction completion records and post construction completion records for those sites for which costs have been estimated or provided. Include information on the site name and location (city and state).
5. Any and all letters, external communications, MOUs, Record of Decisions, Administrative Orders on Consent, Administrative Agreements, Judicial Consent Decrees, Agreement for "Work", Cost Recovery Agreements, "Cashout" Agreements or other public documents communicating a final disposition and/or completion of Superfund site cleanup, including site name, location, completion dates, disposition decisions and other identifying information.

FEE WAIVER REQUEST

WE ACT for Environmental Justice meets the requirements for a fee waiver for this FOIA request and therefore requests a waiver of fees. In the event that the EPA does not waive fees, we ask EPA to notify us of

the basis for your decision and to provide an estimate of costs. Please do not move forward with actions that would require expenditures WE ACT has the opportunity to consider an appeal and the estimate of costs.

Particularly, “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interests of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(1)(1). EPA considers six factors when determining whether to waive fees for a FOIA request. 40 C.F.R. § 2.107(1)(2)(i). As demonstrated below, each of the six factors weighs in favor of granting a fee waiver.

Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.

The records requested concern EPA’s activities in response to Superfund cleanup, a requirement under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 1906 et seq. and the U.S. Superfund Amendments and Reauthorization Act, SARA. These records unquestionably “concern identifiable operations or activities of the Federal government.: *Id.* § 2.107(1)(2)(i).

Factor 2: Disclosure of the Requested Records is Likely to Contribute to the Public Understanding of Government Operations or Activities.

The requested information is “likely to contribute” to an understanding of EPA’s cleanup process under CERCLA because it will supply critically important information that is not currently available to the public. 40 C.F.R. § 2.107(1)(2)(ii). This request seeks documents showing the status of Superfund sites, particularly related to cleanup costs, since January 29, 2014.

Access to this information will provide the public with a picture of EPA’s process for determination of cleanup costs for Superfund sites. Given that WE ACT does not otherwise have access to complete information related to Superfund site cleanup, this information would otherwise be impossible to collect.

Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience Interested in EPA’s Cleanup Activities Associated with Superfund sites under CERCLA and SARA.

Disclosure will “contribute to the understanding” of a broad audience interested in EPA’s Cleanup activities related to NPL and NPL-caliber sites. The requester has staff and members who work on Superfund issues, and have a strong interest in how these sites are slated for cleanup, including cost estimates.

WE ACT has the capacity and intention to disseminate the requested information to some or all of the following: (1) their members, supporters, and partnering organizations, (2) policymakers at varying levels of government interested in Superfund cleanup costs, and (3) members of the news media, who may in turn disseminate the information more broadly to the public.

Through these varied mechanisms, WE ACT intends to convey the requested information to the public to improve public understanding of how EPA handles Superfund sites, particularly as it relates to cleanup costs associated with those sites.

Factor 4: The Public's Understanding of Government Operations Will Be Significantly Enhanced by Disclosure of the Requested Information

Disclosure of the requested records will “contribute significantly to public understanding” of EPA’s Superfund cleanup mechanism under CERCLA. 40 C.F.R. §2.107(1)(2)(iv). Consistent with EPA’s role in administering the Superfund program, in cooperation with states and Tribal governments, and its mission of protecting human health and the environment from the dangers of hazardous waste, the requested Superfund cleanup status updates will shed light on EPA’s schedule for cleanup of Superfund sites and the method utilized to determine Superfund site cleanup costs.

Because many communities of color continue to face ongoing environmental harms and bear disproportionate environmental burdens, many affected communities, stakeholder organizations and individual members of the public continue to have a strong and ongoing interest in the improvement of EPA’s Superfund site cleanup activities. We anticipate that the requested information will further public understanding of how Superfund cleanup activities may be improved at the EPA.

Factor 5: The Requestor Has No Commercial Interest in the Requested Disclosure of Information.

WE ACT is a nonprofit organization that has no “commercial interest that would be furthered by the requested disclosure.” 40 C.F.R. § 2.107(1)(3)(i).

Factor 6: The Requestor's Sole Interest in Disclosure is to Promote the Public Interest.

The sole interest of WE ACT in obtaining the requested records is to inform the public about the determination of Superfund cleanup costs under CERCLA, the EPA Administrator’s mandate to have oversight of Superfund cleanup where costs will exceed \$50 million, and the implications of that mandate relative to Superfund sites in disenfranchised communities. Since WE ACT has no commercial interest in the requested records, the request is not “primarily in the commercial interest of the requester.” *Id.* § 2.107(1)(3)(ii).

In sum, this request meets all of the six factors for a fee waiver. In the event that EPA does not waive fees, we ask EPA *not* to move forward with providing the information requested by the FOIA, notify us of the basis for your decision, and provide an estimate of costs.

INSTRUCTIONS FOR RECORD DELIVERY

Please send records to Adrienne L. Hollis at adrienne@weact.org or mail them to:

WE ACT for Environmental Justice
% Adrienne L. Hollis
50 F Street, NW, 8th Floor
Washington, DC 20001

In the event that you have any questions concerning the type of materials we request, or have concerns regarding the scope of the request, please contact Adrienne Hollis by e-mail at adrienne@weact.org or by telephone at (202) 495-3036.

Thank you for your assistance in this matter.

Sincerely,

Adrienne L. Hollis, PhD, JD
WE ACT for Environmental Justice
50 F Street, NW, 8th Floor
Washington, DC 20001